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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Revision of Part 22 of the) CC Docket No. 92-115
Commission's Rules Governing)
the Public Mobile Services)

REPLY COMMENTS OF SKYTEL CORPORATION

SkyTel Corporation ("SkyTel"), by its attorneys and pursuant to Commission Rule Sections 1.415 and 1.419, respectfully submits its Reply Comments in response to the Commission's Further Notice of Proposed Rulemaking ("Further Notice") issued in the above captioned proceeding.^{1/}

I. Introduction

These Reply Comments address only the issues raised by the Commission's proposed revision of the rules and procedures for licensing of 931 MHz paging systems governed by Part 22. SkyTel reiterates its belief that the Commission's proposals to require frequency specific 931 MHz applications to redefine "initial" and "modification" applications present numerous unnecessary complications that would disserve the public interest. SkyTel also reaffirms its position that the goals of the Commission, and the public interest generally, can best be obtained through the adoption of alternative proposals previously presented by SkyTel.

SkyTel's review of the Commission's files reveals that at least 17 parties filed comments in this proceeding directed to the

^{1/} See Further Notice of Proposed Rulemaking, CC Docket No. 92-115, 59 Fed. Reg. 31186 (June 17, 1994), 9 FCC Rcd ____ (released May 20, 1994). Pursuant to the Further Notice, reply comments in this proceeding are due July 5, 1994. Thus, these Reply Comments are timely filed.

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licensing of 931 MHz paging systems. The nearly unanimous, well-crafted criticism directed at the Commission's proposals provides an additional basis for the Commission to abandon its proposals and attempt to fashion an alternative licensing framework taking into consideration the comments filed in this proceeding.

II. DISCUSSION

A. Requirement of Frequency Specific 931 MHz Applications

The Commission proposed in its Further Notice that all 931 MHz applicants must specify the frequency for which they seek authorization, and that the frequency specified "must be available" at the time the application is filed. Also, applicants with applications pending when the final rules become effective would be given 60 days from the effective date of the final order in this proceeding to amend their applications to specify frequencies for which they seek authorizations.

In its Comments, SkyTel submitted that the proposed requirement that all 931 MHz applicants specify a frequency would not serve the public interest because this requirement would likely increase, not reduce, the number of MX situations; burden the Commission staff and delay the provision of service to the public; frustrate regulatory parity; and increase the opportunity for strike filings.

A review of the comments filed by other interested parties in this proceeding reflects widespread concern that the retroactive application of the frequency specification proposal would frustrate regulatory parity and cause more strike filings and MX applications to be filed. See, e.g., Comments of Alpha Express, Inc. ("Alpha")

at 1, where Alpha noted the unfair and unreasonable effect of such application, as well as statutory and constitutional problems associated with such application.^{2/} Moreover, numerous commenters joined SkyTel in bringing to the Commission's attention the fact that its proposal to abandon current 931 MHz filing procedures would cause delay and lead inevitably to strike and speculative applications.^{3/}

Despite the inherent problems in this approach, certain commenters support frequency-specific 931 MHz application processing.^{4/} Their support of the use of frequency specific applications appears to be based on a theory of carrier responsibility for assessment of frequency availability and system development and expansion, rather than improperly placing these roles on the FCC. SkyTel submits that those commenters overlook the fact that existing rules permit applicants to state a preference for a given frequency and permit the Commission to steer applicants to unused frequencies where the public interest requires. Thus, current rules already provide many of the benefits of the proposed rules without providing the costs associated with the proposal. In any event, any problems with the Commission's current rules are far outweighed by the benefits that would be lost were the Commission's proposal adopted.

^{2/} See also Comments of AirTouch Paging, Paging Partners, Premiere, ProNet, and Tri-State.

^{3/} See, e.g., Comments of AirTouch Paging at 3 and 4.

^{4/} See comments of CompComm, Metrocall, Paging Network, Inc. ("PageNet"), and SMR Systems.

B. The Commission Should Not Redefine "Initial" and "Modification" Applications.

The Commission also proposed to redefine what constitutes "initial" and "modification" applications in the context of 931 MHz paging.^{5/}

SkyTel commented that since definitions of "modification" applications in the 931 MHz band already exist, those definitions should be applied, rather than modified to permit more applications to be included in auctions. As Skytel observed in its Comments, Congress did not provide that modification applications should not be subjected to auction only to have the Commission undermine its mandate by changing substantially the definition of "initial" and "modification" applications.

The majority of commenters were unsupportive of the Commission's proposed revision of these definitions.^{6/} Not only was there genuine disapproval, commenters suggested that these definitions were inappropriate because there was no operational basis for the Commission's new definitions. Id. The commenters

^{5/} The Commission proposes to consider the following to be an initial application: (1) an application anywhere on a new frequency and (2) a proposal to locate a new facility more than two kilometers (1.6 miles) from any existing facility operating on the same frequency. Further Notice, at para. 18. A 931 MHz paging application would be considered a modification of an existing system only if (1) it proposed new locations 2 kilometers (1.6 miles) or less from a previously authorized and fully operational base station licensed to the same licensee operating on the same frequency; (2) the application were for a change of location within 2 kilometers (1.6 miles) of an existing station licensed to the same licensee on the same frequency; or (3) the application proposed a technical change that would not increase the service contour. Id.

^{6/} See, e.g. Comments of Ameritech, CompComm, PageNet, Paging Partners, Priority, ProNet, and Source One.

generally urged that the Commission use existing definitions. SkyTel supports these commenters.

Some commenters urged that, if definitions governing initial and modification applications must be changed, and the concept of a limitation on mileage for additional transmitter sites were to be implemented, a more realistic mileage separation of approximately 20 miles from existing transmitters should be used to distinguish between initial and modification applications.^{7/} SkyTel agrees with these commenters, and observe that this would minimize significantly the disruption that would occur through a change in definition. Moreover, this modified proposal provides some rational operational basis to differentiate between initial and modification applications.

In a similar vein, several commenters also suggested that applications for "fill-in" or internal site transmitters which do not expand existing service and interference contours be considered permissive modifications or eliminated altogether.^{8/} SkyTel concurs with these suggestions. In the same Further Notice, the Commission proposed to forego requiring applications for internal sites which do not expand the service footprint for cellular operations. As AirTouch noted in its comments, the very same public interest benefits that will accrue from its use in cellular will also accrue from its use in 931 MHz paging. See AirTouch Comments at 11.

^{7/} See, e.g., Comments of Ameritech at 8, Paging Partners at 6.

^{8/} See, e.g., Comments of AirTouch at 11 and 12, Metrocall at 6 and ProNet at 7.

C. Retroactive Application of the Proposed Rules is Impermissible

Skytel detailed in its comments how retroactive application of the Commission's proposed rules to pending applications would be in contradiction of Congressional mandate, controlling precedent, and consistency with the Commission's own prior actions.

Skytel's position in this regard was fully supported by many of the parties.^{9/} For example, ProNet observed that under the Further Notice's procedures, most inequitably, incumbent 931 MHz carriers would see their authorizations jeopardized solely due to the pendency of petitions that have never been subject to agency scrutiny. Petitions that are strike filings, otherwise abusive, utterly meritless or procedurally defective could still impel involuntary divestiture of valid and effective 931 MHz authorizations. See Comments of ProNet at 5. There was also ample support for Skytel's urging to treat pending applications in accordance with the rules in effect at the time the applications were filed^{10/}, and to apply any newly-established rules only prospectively.

D. Treatment of Pending Applications

With respect to the competitive bidding aspect of the Further Notice, SkyTel demonstrated that the Omnibus Budget Reconciliation Act of 1993 limits the types of applications that the Commission

^{9/} See, e.g., Comments of Alpha, Paging Partners, Premiere, ProNet, and Tri-State.

^{10/} The Commission's resources should be focused on swiftly resolving petitions against pending petitions in accordance with 931 MHz licensing procedures as initially established, applied and interpreted by the Commission. See ProNet Comments at 5.

can auction. Only two of the commenters expressed an interest in the use of competitive bidding for pending MX applications and that support was in order to clear up the congestion that exists in markets where there are more applications than frequencies.^{11/} Skytel submits that these are special circumstances requiring special treatment.

AirTouch, Paging Partners and PageNet supported first-come, first-served treatment of newly filed applications. SkyTel cannot support such a proposal because it could cause an existing wide-area system operator either to file applications prematurely in proposed expansion areas or to risk being prevented from ever expanding on its frequency of choice. SkyTel is in agreement that something must be done to help resolve MX situations where they exist with any 931 MHz applications. Towards that end, SkyTel suggested that in situations where there are more applications than frequencies, the Commission should adopt rules that would permit it to issue a Public Notice listing all parties that the Commission deems to be MX'd. The same Public Notice should further identify those frequencies that the Commission deems to be "available for filing" and direct the applicants to amend their applications to specify a particular frequency. Once the amendments are received, the Commission should be able to generate promptly a listing of all applications that are deemed to be mutually exclusive and then process those applications according to either the rules in place at the time the applications were filed or more equitable rules as the Commission may devise.

^{11/} See, e.g., Comments of AirTouch and PageNet.

E. Other Proposal's Supported by SkyTel

SkyTel supports the proposal of AirTouch, PageNet and PCIA that 931 MHz paging frequencies should be licensed on a market area basis. By licensing 931 MHz frequencies in this manner, the Commission will be able to provide the same type of exclusivity to the Part 22 carriers which their private carrier counterparts now enjoy. In congested areas, and with proper safeguards, SkyTel submits that the proposals of AirTouch and PageNet that a frequency coordinator such as NABER be used to aid in the processing of licensing of 931 MHz applications deserve further study. Not only would this proposal ease the load on the Commission staff, it would provide for faster processing.

III. CONCLUSION

SkyTel commends the Commission for proposing to improve its rules governing the licensing of 931 MHz paging systems; however, as set out above, the 931 MHz paging industry would best be served if the Commission revisited its proposals and drafted new ones consistent with the comments presented in this proceeding. The benefits provided by the Commission's modifications are far outweighed by the burdens they present. Clearly, the overwhelming majority of commenters found fault with the Commission's proposals in one form or another.

The Commission has a unique opportunity in this proceeding to fashion rules and regulations that will adequately safeguard the concerns of the commenters while greatly benefiting the mobile services industry as well as the public who benefit from these services. A review of the comments in this proceeding demonstrates

a strong desire for action by the Commission to streamline its rules and provide for a faster, more useful 931 MHz licensing scheme. Accordingly, SkyTel submits that the Commission should abandon its 931 MHz proposals in the Further Notice and formulate proposed amendments to the Part 22 Rules in accordance with SkyTel's comments in this proceeding.

Respectfully submitted

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